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Ending Army Spying At Home

ONE THEME THROUGHOUT the Church committee reports and other studies of improper domestic intelligence-gathering is the extent to which such operations have been fostered by inadequate laws, imprecise definitions of various agencies' roles, and the absence of effective checks on unlawful activities. The Senate Judiciary Committee has an opportunity to attack some of these problems now by approving a pending bill that would prohibit almost all military spying on civilians.

The fact that Army units had been amassing dossiers on thousands of civilians was first disclosed in 1970, long before the full scale of federal domestic intelligence efforts became known. Like several other sprawling surveillance programs, the Army operations had begun in the mid-1960s as an attempt to get better information for use in combatting civil disturbances and anti-war protests. As a long investigation by Sen. Sam Ervin's constitutional rights subcommittee showed, the military spying quickly followed the customary course of ill-defined, unchecked bureaucratic activity. Bits and pieces of information were gathered indiscriminately about the politics, associations and private lives of at least 100,000 civilians and thousands of groups, most of whom were engaged entirely in peaceful, law-abiding conduct. All this material was filed away without regard for its accuracy, its relevance to any proper military mission, or the privacy of those on whom the dossiers were kept.

In response to public protests and the Ervin panel's inquiry, the Defense Department in 1971 canceled those broad surveillance programs and issued a directive barring future military spying on civilians in most instances. Since then, DOD has maintained that its own controls are adequate and congressional action is not necessary or appropriate. However, the

DOD directive, as revised last year, permits surveillance where a military commander decides, for instance, that a civilian's activities "threaten" military "loyalty, discipline or morale" by encouraging disruption or disobedience. Such vague language is far too permissive, especially in times of stress. Indeed, a DOD review panel has used such rationales to justify spying on anti-war and dissident groups in several cases since 1971. Moreover, in the absence of a law, DOD's policies could be further relaxed at any time.

The bill before the Senate Judiciary Committee, S. 84, would impose proper statutory controls. The measure, initiated by Sen. Ervin and now sponsored primarily by Sens. Charles McC. Mathias (R-Md.) and John V. Tunney (D-Cal.), would generally prohibit military surveillance of civilians who are not connected with the armed forces or defense contractors. The only exceptions would be in connection with normal employment and security checks, law-enforcement activities assigned to the armed forces, and cases of civil disturbance where military units have actually been deployed. These curbs would be enforced by criminal penalties for willful violations, and by authorizing citizens who have been targets of unlawful surveillance to bring civil suits.

This measure recognizes that official spying on those who have broken no law can have a serious inhibiting effect, making citizens apprehensive and discouraging them from exercising their rights and liberties. Moreover, the bill affirms that such surveillance by the military is especially repugnant in a free society. Because the Army's excesses were among the first to be disclosed, and because statutory controls are relatively easy to devise, it is appropriate that the effort to legislate curbs on domestic intelligence-gathering begin with prompt approval of S. 84.